

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

KAREN SCHLATER,

Plaintiff,

v.

WALGREEN CO., a Corporation, d/b/a
Walgreens #15823, STEPHEN L.
LAFRANCE PHARMACY, INC., a
Corporation d/b/a Walgreens #15823,
FERRANDINO & SON, INC., LEROY
BAUMAN d/b/a ROY'S HAULING AND
LANDSCAPING and CBRE, INC.,

Defendants.

No. 4:17-cv-02850-JAR

MEMORANDUM & ORDER

This matter is before the Court on the joint motion of Defendants for the independent medical examination ("IME") of Plaintiff. (Doc. No. 39). Defendants request the IME because they challenge the extent of Plaintiff's injuries that resulted from a slip and fall accident that occurred on February 14, 2014, on the sidewalk outside of a Walgreens store. Plaintiff filed no opposition to the motion, and the time to do so has passed.

DISCUSSION

A court may order a party to submit to a physical or mental examination by a suitably licensed examiner where the party's physical or mental condition is at issue. Fed. R. Civ. P. 35(a). Although Rule 35 is construed in favor of granting an independent examination, the moving party must demonstrate a party's physical or mental condition is in controversy and good cause exists for the request. Fed. R. Civ. P. 35(a)(2)(A); *Schlagenhauf v. Holder*, 379 U.S. 104, 118 (1964); *Bieser v. J.E. Phillips & Sons, Inc.*, No. 4:12-CV-386-JAR, 2013 WL 1611483, at *1

(E.D. Mo. April 15, 2013). Further, the moving party must set forth the “time, place, manner, conditions, and scope of the examination, as well as the person or persons who will perform it.” Fed. R. Civ. P. 35(a)(2)(B).

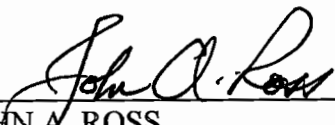
Here, Defendant has demonstrated that Plaintiff’s physical condition is in controversy and that good cause exists for the requested examination. *See Schlagenhauf*, 379 U.S. at 119 (“[a] plaintiff in a negligence action who asserts mental or physical injury . . . places that mental or physical injury clearly in controversy and provides the defendant with good cause for an examination to determine the existence and extent of such asserted injury”). Defendants also state that Dr. Richard Katz, M.D. and Dr. Fucetola would conduct the examination. Accordingly, the Court will grant Defendants’ motion subject to the parties agreeing on the time, place, manner, conditions, or scope of the examinations.

CONCLUSION

Accordingly,

IT IS HEREBY ORDERED that Defendants’ joint motion for the independent medical examination of Plaintiff (Doc. No. 39) is **GRANTED**.

Dated this 19th day of September, 2018.



JOHN A. ROSS
UNITED STATES DISTRICT JUDGE